THE CONTROL OF INTERSTATE UTILITY CAPITALIZATION BY STATE COMMISSIONS

In the regulation of rates and service the interstate character of a utility business does not seriously complicate the question of jurisdiction, since it is a well-established principle that intrastate rates and service are subject to state control. Capitalization, however, does not so easily lend itself to control upon a geographical basis. Stock may represent ownership in a property operated as a unit but situated in more than one state. Bonds or notes may be protected by a mortgage upon property located within several states. Or securities, the proceeds of which are to be expended in one or more states, may be issued by a company incorporated under the laws of another state. Under such circumstances, which state commission, or commissions, are to pass upon the securities? It must be confessed at the outset that we are here upon uncertain ground, for the confusing questions of jurisdiction regarding capitalization which are raised by the interstate character of many utilities are as yet not definitely settled. It will be seen that the problem is twofold. First, what is to be the degree of control exercised by a state, through its commission, over the issuance by a domestic corporation of securities which represent expenditures upon, or are secured by liens upon, property outside the state? Second, what is to be the degree of control exercised by a state, through its commission, over the issuance by a foreign corporation of securities which represent expenditures upon, or are secured by a lien upon, property within the state?

The capitalization sections of the public-utility laws of several states seem to apply only to domestic corporations. For example, the New York law regulating the issuance of securities applies only to utilities "organized or existing, or hereafter incorporated, under or by virtue of the laws of this state."[1] The Maryland,[2] Nebraska,[3]

[1] New York, Laws of 1910, chap. 480, secs. 55 and 69.

[2] Maryland, Laws of 1910, chap. 180, secs. 27 and 34.

[3] Nebraska, Acts of 1909, chap. 108, sec. 1.

Michigan,[1] and Vermont[2] laws contain the same provision. On the other hand, many of the laws seem to make no distinction between foreign and domestic corporations. For example, the laws of Arizona,[3] California,[4] Missouri,[5] and Illinois[6] provide that "the power of public utilities to issue stock, stock certificates, bonds, notes and other evidences of indebtedness and to create liens on their property within the state is a special privilege" to be exercised only under the supervision of the commission. The Kansas law[7] applies to "all companies organized under the laws of others states of the Union and of foreign countries as well as to domestic corporations." In many of the statutes it is not made clear how far the jurisdiction of the commissions extends.

SECURITIES OF DOMESTIC CORPORATIONS

The simplest case imaginable is that of a domestic utility corporation wishing to issue securities, the proceeds of which are to be expended within the state. Certainly, here, if at all, the parent state would have the right to supervise the issuance of securities, and no troublesome questions of jurisdiction would arise. Frequently, however, the situation is not so clear. The first group of laws mentioned seems to imply that a domestic corporation must secure authorization for the issuance of all its securities from the state of its creation, even though some or all of the proceeds of the securities are to be used in other states. This principle is actually applied by some of the commissions.

The Massachusetts Railroad (now the Public Service) Commission has been accustomed to pass upon all issues of the Boston & Maine Railroad, incorporated in Massachusetts, as well as in neighboring states, whether the expenditures are to be made in Massachusetts or in the other states. The Vermont commission recently gave its approval to a note issue of $489,000 by the

[1] Michigan, Pub. Acts, 1911, No. 177, sec. 1.

[2] Vermont, Laws of 1908, No. 116, sec. 16.

[3] Arizona, Session Laws, 1912, chap. 90, sec. 52 (*a*).

[4] California, Statutes, 1911, 1st Extra Session, chap. 14, sec. 52 (*a*).

[5] Public Service Commission Law of Missouri, 1913, sec. 54.

[6] Hurd's Revised Statutes, 1913, chap. 111*a*, sec. 20.

[7] Kansas, Laws of 1911, chap 238, sec. 24*a*.

Connecticut River Power Company, a domestic corporation in both Vermont and New Hampshire, a part of the proceeds of which represented expenditures in New Hampshire.[1] The chairman of the Ohio commission says, in response to an inquiry upon this subject:

> The Ohio Commission approves securities such as you describe only because the companies apply to have them approved. The companies apply because they are not sure who has the power of approval for a company organized in Ohio but making additions in another state.[2]

The Maryland commission has unequivocally taken the position that securities issued by a domestic utility corporation must have the commission's approval, even though the proceeds are to be spent outside the state. This position was taken by the commission in connection with the issuance of securities by the Baltimore & Ohio Railroad Company, a domestic corporation. In 1913, the company announced its intention to issue $63,250,000 of bonds, which apparently were to be secured by a mortgage upon its entire system. The Maryland Public Service Commission sued for an injunction to prevent the issuance of the bonds, upon the ground that its consent must first be secured. The commission rested its claim upon the fact that the Baltimore & Ohio was a Maryland corporation, and must therefore obtain the consent of the commission, since the state law gave the commission control over utility corporations "organized or existing, or hereafter incorporated, under or by virtue of the laws of the state of Maryland." The company asserted that the commission's approval was not necessary, as only 281 miles of track of its total of 4,550 were located in Maryland, and since a considerable portion of the proceeds of the issue were to be spent on its properties outside of Maryland. The case finally reached the Maryland Court of Appeals, which held that the commission could exercise no jurisdiction whatever as regards securities, the proceeds of which were to be spent outside the state.[3] The Court said:

> [An interstate carrier] may, as laid down by Chief Justice Waite, be made subject to the control of each state as to matters affecting the operations of the

[1] Decision not yet available in printed form. Decided January 2, 1915.

[2] Personal letter to the author.

[3] *M. Laird et al., Public Service Commission* v. *Baltimore & Ohio Railroad Company*, 88 Atl. 348; L. R. A., New Series, 47, p. 1167.

company within the state, but beyond that, state legislation is powerless without striking at the very fundamentals of rights as recognized in our government. . . . . Manifestly, the public service commission of this state is not, and could not be, invested by the legislature of this state with any supervisory power over the expenditures of moneys in other states, nor the apportionment of the expenditure of its money as between different states, nor could it pass upon to approve or condemn the wisdom or unwisdom of construction work to be performed in Virginia, West Virginia, Ohio, Indiana, Illinois, Missouri, Delaware, and other states. . . . .

It may well be that the time will come when the jurisdiction of the Interstate Commerce Commission will be so broadened as to confer upon it a power to regulate in some measure the fiscal management of the great interstate carriers of this country, and enable them to prevent in the future some of the ill-advised and unfortunate policies of the past. But the fact that such a power has not yet been conferred cannot authorize a state to grasp a jurisdiction it was never intended it should authorize.

The New Hampshire commission maintains that its approval is not necessary for the issuance of securities by domestic corporations, in so far as the proceeds represent expenditures outside of the state. The Twin State Gas & Electric Company, operating properties in Maine, New York, Vermont, and New Hampshire, petitioned the New Hampshire commission for approval of $2,235,000 of bonds, $1,500,000 of which were to be used for refunding purposes. It was maintained that it was difficult to ascertain what portion of the original issue represented indebtedness incurred on account of the portion of the property located in New Hampshire, and therefore the commission was asked to authorize the entire amount of bonds. The commission said:

The petitioner may introduce evidence upon this point, and so far as said issue of $1,500,000 of 1906 bonds represents indebtedness incurred in the acquisition and improvement of New Hampshire properties, it will be allowed, and new bonds to refund the same will be authorized. So far as it represents other indebtedness, authority from this commission is not required.[1]

The New Hampshire commission took a similar position upon the application of the Connecticut River Power Company. This company, which operated an interstate property and which was a domestic corporation in both Vermont and New Hampshire,

[1] New Hampshire Public Service Commission Report, IV, 9.

applied to the commissions of both states for permission to refund certain outstanding notes. The commission said:[1]

So far as the proposed refunding relates to indebtedness not arising out of the purchase or improvement of properties in New Hampshire, our approval is not required.

These decisions of the New Hampshire commission rest upon the provision of the New Hampshire public service commission law,[2] which provides that no utility corporation need apply for authorization for its securities except for the—

acquisition of property, the construction, completion, extension, or improvement of its facilities, or the improvement or maintenance of its service within this state, or the discharge or refunding of its obligations or reimbursement of moneys actually expended for such purposes.

SECURITIES OF FOREIGN CORPORATIONS

The fact that utility corporations frequently issue securities, the proceeds of which are to be spent in states other than the parent state, or which are secured by liens upon property in states other than the parent state, gives rise to the question: What measure of control over capitalization may be exercised by the state in which the property is located? Does the fact that the property to be encumbered is located within a state, or that the proceeds are to be spent on property within a state, give to such state any right of control over the issuance of securities by a foreign corporation?

That the mere fact of foreign incorporation does not preclude a commission from passing upon securities issued to acquire equipment or property within the state, is the position of the California, Missouri, and Arizona commissions. The Southern Pacific Company, a foreign corporation, applied to the California commission for approval of $2,010,000 of Southern Pacific Company equipment trust certificates, to be issued for the purpose of acquiring new equipment, consisting of various types of cars. In view of the fact that much of the equipment was to be used in interstate business and that the California law provides that the utilities act shall not be applied to commerce with foreign nations or commerce among the several states, Commissioner Thelen held:

I am of the opinion that the assumption by this commission of jurisdiction over the issue by a foreign corporation of equipment trust certificates in a

[1] Public Utilities Reports, 1915, C. No. 1, p. 37.

[2] New Hampshire, Laws of 1911, chap. 164, sec. 14*a*.

foreign state, the proceeds whereof are to be used to purchase equipment used exclusively in others states or moving in interstate commerce, would be beyond its powers, under the provisions of Section 85 of the Public Utilities Act, which section reaffirms the well-established principles of law governing commerce among the several states and with foreign nations.

On the other hand, it seems equally clear that with reference to the equipment, if any, which is to be used solely and exclusively in the state of California, this commission has undoubted jurisdiction, particularly in the absence of any action by the Federal Government, in the matter of the issue of stocks, bonds, and other securities of common carriers. . . . .

The commission requested the company to make a segregation to show what portion of the proposed equipment was to be used exclusively within the state of California. The testimony presented indicated that the equipment to be purchased for all the underlying lines, other than the Pacific Electric Railway Company, was to be used either exclusively in other states or in journeys crossing state lines, but that the equipment to be purchased for this line would be used exclusively in California. Commissioner Thelen therefore held:

I am accordingly of the opinion that this Commission has jurisdiction over their application in so far as affects the guarantee by the Southern Pacific Company of trust certificates to be used in purchasing the cars to be used by the Pacific Electric Railway Company, and that, with respect to the remaining portion of the application, this Commission has no authority.[1]

The Missouri commission holds that the encumbering of utility property within the state requires its approval, whether it be by a foreign or domestic corporation. The American Refrigerator Transit Company, a New Jersey corporation, doing business in Missouri, applied to the Missouri Commission for approval of an issue of notes, to be secured by an indenture of lease and conditional sale agreement of its cars. The company in its petition denied that the commission had jurisdiction over it. The commission said:

It is significant that the provisions of the Public Service Law are not restricted to domestic corporations, and the right of supervision reserved in section 54 over the power of the corporations mentioned "to create liens upon their property situated in this State" indicates that it was intended to apply to foreign corporations doing business in this State. . . . . We think it was the intention of the Legislature to bring within the jurisdiction of the

[1] *Opinions and Orders of the Railroad Commission of California*, III, 567.

Commission the encumbering of such property as that owned by the petitioner and used in the transportation of freight in this state.[1]

In passing upon an application of the Chicago, Rock Island & Pacific Railway Company, the Missouri commission again took substantially similar ground. The Chicago, Rock Island & Pacific Railway Company, an Illinois and Iowa corporation, applied to the Missouri commission for its consent to the issuance of $4,994,000 of bonds, to be secured under the first and refunding mortgage upon all the company's property, a part of which was situated in Missouri. The company challenged the jurisdiction of the commission, but the commission asserted its power in the premises, saying:

In the case of *In re American Refrigerator Transit Company*, 1 Mo. P. S. C. 29, a similar contention was made and was decided adversely to the applicant, the Commission holding that it had full jurisdiction over railroad corporations, whether foreign or domestic, in the matter of the issuance of stocks, bonds, notes, and other evidences of indebtedness creating liens upon their property situated in this State. We still adhere to the doctrine of that opinion and rule against petitioner upon the question raised as to the jurisdiction of the Commission.[2]

The Missouri commission has also passed upon the applications of several foreign railroad companies for permission to issue capital stock, and in such cases has made the same inquiries as though they were domestic corporations.

The Illinois commission takes the position that foreign incorporation does not prevent control of capitalization, in so far as the securities are protected by a lien upon property situated within the state. This commission has approved bond issues the proceeds of which were to be spent largely in other states, but which were secured by a mortgage upon property a part of which is situated in Illinois. In 1914 the commission approved the issuance of $30,000,000 of bonds by the Chicago, Milwaukee & St. Paul Railroad, a Wisconsin corporation, the proceeds of which were to be spent in Illinois, South Dakota, Iowa, Michigan, Wisconsin, Minnesota,

[1] Missouri Public Service Commission Reports, I, 37.

[2] *Ibid.*, I, 236.

Montana, and Washington.[1] The counsel of the commission, in explaining the action of the commission, says:[2]

> This Commission had jurisdiction of this matter, and the railway company was compelled by law to ask for the approval of said bond issue, because the mortgage or deed of trust securing the payment of said bonds rests upon real estate owned by the Chicago, Milwaukee & St. Paul Railway Company, in the state of Illinois, as well as without the State.

Describing the practice of the Arizona commission, its chairman says:[3]

> We have always held that in the case of a foreign corporation owning and operating property within the state, the permission of this Commission is necessary for the approval of the issuance of securities. In other words, we assume control over the issuance of the stock and other securities of any public service corporation where the application of the proceeds is to be made on property situated within the State.

The views of the Georgia and the New York Second District commissions differ from the decisions above referred to. These bodies take the position that control over the issuance of securities of foreign corporations is beyond their power, or the power of the legislature. The Georgia commission has indicated its position in the Atlantic Coast Line case.[4] The Atlantic Coast Line Railroad Company, a Virginia corporation, was operating a railroad through Georgia and Virginia. The question arose as to whether the Georgia commission's approval was necessary for the issuance of bonds secured by lien on all of the property of the corporation, a part of which was situated in Georgia. The Georgia statute stipulated that all corporations "over which the authority of the Railroad Commission is extended by law" should be required to secure the authorization of the commission in order to issue securities. The question therefore was whether the commission's authority extended over foreign corporations doing an interstate business. The commission said:

> Unquestionably, the Legislature could and did confer jurisdiction over the Atlantic Coast Line Railroad Company and every other public service

[1] Orders, State Public Utilities Commission of Illinois, No. 1, p. 64.

[2] Personal letter to author, October 31, 1914.

[3] Personal letter to author, October 9, 1915.

[4] *Re Issue of Corporate Mortgage Bonds by the Atlantic Coast Line Railroad Company.* Not published in the reports of the commission, but available in its files.

corporation, foreign and domestic, doing business within Georgia. The purely intrastate traffic of foreign railroad corporations, in Georgia, their intrastate rates and service, the sufficiency and efficiency of their public service, and the policing thereof; that is, the things which relate to, affect, or concern the *conduct of their business in Georgia, as common carriers,* are subject to supervision and regulation by this Commission.

. . . . The issuance of stocks and bonds is the exercise of inherent corporate powers in exclusively internal affairs. The issuance of stock certificates, in the state of Virginia, by a corporation created by Virginia and in accordance with the powers given in the charter of existence, and in fulfilment of subscription contracts made in Virginia, it seems to us, must be wholly beyond regulation by Georgia statute.

While the commission held that the issuance of stocks or bonds by a foreign corporation was entirely beyond its control or the control of the state of Georgia, it indicated that the right to mortgage or encumber property might be restricted by the state in which such property was located, regardless of whether the corporation be foreign or domestic. But it was the issuance of bonds without the commission's approval, rather than the encumbering of property, which the law forbade. The commission held it could have no more control over the issuance of bonds of a foreign corporation than over the issuance of stock. The commission stated:

The right and power to issue bonds, notes, or evidences of debt must not be confused with the right to *secure* them by mortgage upon or deed to property. The first it seems to us is governed exclusively by the charter and by the law of the state creating the corporation. . . . .

It is also suggested that it is the public policy of Georgia to protect its citizens, by governmental supervision, against improvident or fraudulent bond issues by corporations, and they should be protected against such issues by foreign as well as domestic corporations. But this involves the power to carry out such a public policy. In the case of corporations created, brought into existence by it—for whose birth, life, and death it is responsible—the State unquestionably has such powers, and with it has a duty. But this cannot be true as to the creature of another sovereignty, over whose conduct while within our bounds we have jurisdiction, but for whose existence, powers, and privileges we are not responsible, or for the exercise of which *beyond our* borders can we be held accountable. Our citizens must buy their bonds, knowing this, and on their own judgment. No one, for a moment, would contend that the state of Georgia could exercise authority as to a bond of an English or Russian corporation, nor hold such unlawful if not approved by this Commission. Then how any more so as to the bond of a Virginia corporation?

The New York Second District Commission appears to take substantially the same position. The commission in its *First Annual Report*, page 18, calls attention to the fact that the capitalization features of the law apply only to corporations created under the laws of the state of New York, and adds: "Clearly, the capitalization of foreign corporations is beyond control either of the legislature of this State or of any commission created by it."

CONFUSION AND INADEQUACY OF THE PRESENT SYSTEM

The fact that under existing laws and commission procedure an issue of securities must frequently obtain the approval of two or more commissions creates a seriously confusing and unsatisfactory situation. Under this system it may happen that the various commissions will be unable to agree as to the amount of securities properly issuable, or as to the terms upon which they should be issued. Some of the commissions are restricted in granting their approval by the terms of the laws under which they operate, which may not conform to the laws of neighboring states; or, the approval granted by one commission may be denied by another. This is what actually happened in the petition of the Southern Pacific Company for authority to issue $30,000,000 of two-year secured notes. Permission was promptly given by the California commission,[1] but authorization was denied by the Arizona commission.[2] Further consideration of a two-year note issue was abandoned, and one-year notes were issued instead, for the issuance of which the approval of neither commission was required.[3] It is claimed that there has been an inclination on the part of some of the commissions to insist that a certain portion of the proceeds should be spent within their state, as a condition of their consent to the issuance of securities.[4] It is conceivable that the possibility

[1] *Opinions and Orders of the California Railroad Commission*, II, 982.

[2] First Annual Report of the Arizona Corporation Commission, p. 826.

[3] Under the laws of California and Arizona, as of most other states, the issue of notes running twelve months or less does not require commission approval.

[4] See Hearing before the Commission on Interstate and Foreign Commerce, on Regulation of Stock and Bond Issues by Common Carriers (House of Representatives, 63d Congress, February 9 to March 13, 1914, pp. 144 and 151); also *World's Work*, February, 1916, p. 455.

of such action upon the part of the commissions might prove a source of danger to the interstate carriers.

Not only is the present method unsatisfactory, because of the possibility of difference in judgment between state commissions and difference in the laws under which the commissions operate, but it also brings it about that authorization is given for the issuance of securities, when the approving commission has no adequate means of acquiring at first hand the information upon which its decision rests. For example, of the $30,000,000 issue of the Chicago, Milwaukee & St. Paul Railroad which was approved by the Illinois commission as above noted, about $8,000,000 was to be expended on lines west of Mobridge, South Dakota. Further, large amounts on lines east of Mobridge were to be spent outside of Illinois. For instance, almost $2,000,000 was for track elevation in Milwaukee. Under such or similar circumstances, how can a commission secure for itself adequate information upon which to base the statements required to be made by it, that is, that the amounts to be expended outside the state are reasonably required and that they are to be used only for purposes properly chargeable to capital account? How can it evaluate the properties in order to reach a determination, or how can it assure itself after the issue has been made that the proceeds have been spent only for the purposes specified? As expressed by the chairman of the Ohio commission: "It has always struck me as being particularly futile for this Commission to pass upon not only the necessity, but the actual installation of, say, a roundhouse at Cairo, Illinois."[1]

Outside of its own state a commission has no official authority. As to expenditures outside the state, it must ordinarily rely either upon the representation of the applicant or the findings of the commissions in the other states. As a matter of fact, the custom has developed among many of the commissions of placing large reliance upon the statements and findings of commissions representing other states. For example, it has been the custom of the commissions of New Hampshire, Vermont, and New York to accept the findings of the Massachusetts Public Service Commission (formerly the Railroad Commission) as to the expenditures

[1] Letter to author, February 9, 1915.

of the Boston & Maine Railroad which are properly capitalizable, and to concur in regard to the amount to be authorized. The practice of the Michigan commission is expressed as follows by its chairman:[1]

> Our practice is in large measure to give full faith and credit to the findings of the commission in the state having the home office of the company, or where the principal part of the work for which the securities are to be expended is being performed.

In referring to the issues of the Southern Pacific Company, which company presents its applications to both the California and Arizona commissions, the chairman of the Arizona commission says:[2]

> Inasmuch as the California Commission has headquarters in San Francisco, an engineering and accounting study is made by that commission in matters germane to the petition and, ordinarily, we follow the conclusions arrived at in the sister state.

This system of reliance upon the findings of other commissions brings it about that commissions representing various states give their authorization to securities the propriety of which, in so far as they represent expenditures outside of the state, cannot be vouched for at first hand. The customary assertions regarding the securities are made in the permits granted, as, for example, that the issue is reasonably required, that it is in a proper amount, and for proper capital purposes—which statements, in the case of property outside of their jurisdiction, the commissions frequently cannot make as the result of their own investigation.

The conclusion that existing methods in the supervision of capitalization of interstate projects are inadequate is strengthened by a consideration of the special problem of control of capital stock issues and debentures or unsecured bonds. It is doubtless within the legal power of a state to control the encumbering of property situated within its borders, and therefore perhaps of bond issues in so far as they are secured by mortgage upon such property. But it is difficult if not impossible to understand how one state can regulate the issuance of capital stock by a foreign corporation,

[1] Personal letter to the author, January 13, 1915.

[2] Personal letter to the author, October 9, 1915.

even though the proceeds of such stock are to be spent within the state, or the issuance by a foreign corporation of bonds not secured by a mortgage upon property within the state. Yet such powers are actually conferred upon the commissions of several states by statute, and are actually being exercised by several of the commissions, as already pointed out.

There has been as yet no authoritative judicial determination of this problem of jurisdiction over capitalization. But it is a well-established principle that, since the rights to exist and exercise the functions of an artificial person are derived solely from the state of incorporation, that state alone has control over the exercise of corporate functions. The powers of the corporation to borrow money and to issue stock are granted by the parent state. This power to borrow may be restricted by other states in so far as property situated in those states is mortgaged to secure bondholders and other creditors. But stock or debenture bonds do not create a lien on any particular property. Stock merely represents a share in the total ownership. Debenture bonds are, in essence, unsecured promissory notes. The issuance of such securities is a corporate function, derived solely from the state under whose laws the company is incorporated and presumably subject to the control of this state only. While prediction is dangerous, it is to be expected in view of the long line of unvarying decisions, that the courts will regard the attempt to regulate the issuance of such securities of foreign corporations as abortive. Obviously, if it proves impossible for the states to control the issuance of stock or debentures of foreign corporations, the doors to overcapitalization will be swung wide open. Perhaps little need be feared regarding the issuance of debentures, as this type of security is not widely used in the United States. But if the position here indicated becomes the established one, it will prove impossible to prevent foreign corporations from overcapitalizing utility properties through stock issues, without some alteration in our existing system of regulation.

PROPOSED REMEDIES

Various remedies have been suggested for the unsatisfactory and chaotic condition which has developed. It has been proposed that the regulation of capitalization be left entirely to the parent

state. But the position contended for by the Maryland commission, that incorporation under the laws of a state should entitle the commission representing that state to pass upon all security issues of a utility regardless of where the proceeds are to be expended is one which will not find a ready acceptance. Often the parent state is little concerned with the operations of its offspring. For example, the Southern Pacific Company, a Kentucky corporation, operates an extensive railroad system, but it has not even a sidetrack in the state of Kentucky. Even though some of the property should be located in the parent state, this fact does not render the commission of that state competent to pass upon securities the proceeds of which are to be spent in remote states. Nor would this proposal do away with the possibility of conflicts of authority between the state commissions, since many important roads are incorporated under the laws of several states. The Lake Shore & Michigan Southern Railroad Company, for example, is a corporation of New York, New Jersey, Pennsylvania, Ohio, Illinois, and Michigan.

Or the various states could prohibit the placing of property within the state under a general mortgage with property outside the state. Under this policy of segregation no state would be called upon to pass upon securities protected by a mortgage on property in other states. But in view of established methods of railroad financing this would be inadvisable. It might prove exceedingly inconvenient to a corporation to divide its securities into several issues, each issue to be secured simply by the property within a particular state; and it might prove difficult to sell the securities thus divided, if the entire property were an operating unit. Certainly such securities could not be sold upon such advantageous terms as under the present method, and the cost of capital would be increased. Furthermore, this proposal, if adopted, would not simplify the problem of controlling the issuance of capital stock by foreign corporations.

Or the states could require that all corporations owning and operating utility property within their borders should be domestic corporations. The New York Second District commission, without legislative instruction, applies this policy to gas and electric utilities, and refuses to give its approval to the granting of any

franchise to a foreign corporation, or to the transfer of a franchise to a foreign corporation.[1] The general application of this policy would solve the problem so far as intrastate properties, such as most of the urban utilities, are concerned. But to break up all the great interstate systems into fragments, each part being owned by a separate corporation domiciled in a different state would surely be futile. Such a requirement would increase the intricacy of corporate relations, lessen efficiency in the conduct of business, and render the securities less desirable.

The foregoing considerations point conclusively to the desirability of federal control over the securities of interstate utilities. If it be granted that control of the capitalization of public utilities is desirable, it is apparent that if such control is to be exercised simply by the separate states, only confusion can result in the case of interstate projects. Apparently no method other than federal control, which might mean federal incorporation, if necessary, will bring order out of the chaos which has arisen. Such control, if it is to be effective, must be exclusive. With all intrastate properties owned and operated by domestic corporations, so that their capitalization would be subject to the control of the state in which the property is situated, and with the capitalization of all interstate properties subject to exclusive federal control, there would be no possibility of disagreement between commissions, no conflict arising from differences in state laws, no issuing of authorizations based upon the findings of other commissions, and no legal difficulties upon the ground of foreign incorporation. Whether the duty of supervising the issuance of securities of interstate projects should be performed by the already overburdened Interstate Commerce Commission may be open to question. But, by whatever method it be provided, apparently the next step in the regulation of the capitalization of interstate utilities is exclusive federal control.

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[1] *First Annual Report*, Public Service Commission Second District, New York, p. 18.